

NTSB Order No. EA-4898

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 7th day of June, 2001

Respondent .

**OPINION AND ORDER**

<sup>1</sup> The law judge's Order Granting Administrator's Motion for Summary Judgment is attached.

conviction of narcotics distribution.<sup>2</sup> We deny the appeal.<sup>3</sup>

Respondent's appeal, while registering his disagreement with the Administrator's decision to revoke his certificate, presents no legally cognizable basis for us to disturb the law judge's decision, and, finding no error, we adopt his decision as our own for purposes of this appeal.<sup>4</sup> As the law judge's decision notes, we have consistently upheld revocation when sought by the Administrator pursuant to FAR section 61.15(a)(2) for violations of narcotics statutes.<sup>5</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

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<sup>2</sup> Section 61.15(a)(2) (14 C.F.R. Part 61) provides that convictions of drug-related Federal statutes are grounds for suspension or revocation of any certificate.

<sup>3</sup> The Administrator has filed a motion to dismiss respondent's appeal as untimely. We deny the motion, as the date on the certificate of service accompanying respondent's notice of appeal is within 10 days of the service date of the law judge's initial decision. See 49 C.F.R. § 821.7(a).

<sup>4</sup> The Board does not have jurisdiction to rule on constitutional questions, but to the extent respondent is raising them in his appeal brief those arguments are preserved for any argument before the Court of Appeals, should he proceed to that forum. See, e.g., Administrator v. Lloyd, 1 NTSB 1826, 1828 (1972) (Board has no authority to review constitutionality of FAA regulations).

<sup>5</sup> We have held that we have no authority to consider issues of selective prosecution by the Administrator. Administrator v. Kaolian, 5 NTSB 2193, 2194 (1987) ("We also find no merit in the argument that the law judge erred in refusing to allow respondent to present evidence of what respondent claimed was selective enforcement policies on the part of the FAA. Such evidence, which goes to the matter of prosecutorial discretion exercised by the enforcement agency, is clearly irrelevant to the Board's adjudication of this or any other case. The Board's role is to review the evidence in a particular case to determine if it supports the allegations against the particular respondent.").

1. Respondent's appeal is denied; and
2. The revocation of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>6</sup>

CARMODY, Acting Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>6</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).